

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DONALD G. WATERS,

Plaintiff,

v.

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

Case No. 10-14927

Hon. Gerald E. Rosen

Magistrate Judge R. Steven Whalen

**ORDER ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on February 16, 2012

PRESENT: Honorable Gerald E. Rosen
Chief Judge, United States District Court

On January 5, 2012, Magistrate Judge R. Steven Whalen issued a Report and Recommendation ("R & R") recommending that the Court deny Plaintiff Donald G. Waters' motion for summary judgment and grant the Defendant Commissioner of Social Security's motion for summary judgment. Plaintiff filed objections to the R & R on January 8, 2012. Having reviewed the R & R, Plaintiff's objections, the parties' underlying summary judgment motions, and the administrative record, the Court overrules Plaintiff's objections and adopts the R & R in its entirety.

As the first of his two objections, Plaintiff challenges the Magistrate Judge's

finding that the Administrative Law Judge (“ALJ”) sufficiently addressed and accounted for the limitations attributable to Plaintiff’s lumbar back condition. In Plaintiff’s view, the ALJ failed to provide a “rationale [as] to why [she] made the decisions she did” with respect to this back condition. (Plaintiff’s Objections at 2.) Yet, as explained in the R & R, even assuming the ALJ should have expressly included Plaintiff’s back condition among the list of “severe” impairments found at Step Two of the disability analysis, any such error is harmless in light of the ALJ’s consideration of the limitations stemming from this impairment in the remaining steps of this analysis. (*See* R & R at 12.) Plaintiff acknowledges this point in his objections, (*see* Plaintiff’s Objections at 2), but fails to suggest any defect in the Magistrate Judge’s finding of harmless error. Moreover, to the extent Plaintiff contends that the ALJ’s assessment of his back condition was not based on a permissible reading of the medical record, the Magistrate Judge correctly noted that this contention is defeated by the ALJ’s several-page discussion of this record, (*see* R & R at 12), including the ALJ’s observation that Plaintiff did not pursue “any regular or ongoing treatment for his low back pain with the exception of three pain clinic visits during the summer of 2009,” (Admin. Record at 14). Under this record, the ALJ cannot fairly be said to have impermissibly overlooked or minimized any limitations to Plaintiff’s functioning as a result of his lumbar back condition.

Plaintiff next objects to the Magistrate Judge’s finding that the ALJ gave sufficient reasons for discounting the opinion set forth in a medical assessment form completed by the University Physician Group. Yet, contrary to Plaintiff’s sweeping and hyperbolic

assertions that the ALJ provided “no rationale” for her decision to give little weight to this opinion, and that the Magistrate Judge effectively “insulated [the ALJ] from any review” on this point, (Plaintiff’s Objections at 2-3), the Magistrate Judge correctly identified the several reasons given by the ALJ for discounting this University Physician Group opinion, and cited specific evidentiary support for each of these reasons, (*see* R & R at 10-11). Plaintiff’s efforts to disregard or disparage some of these reasons, and to view the remaining reasons in isolation, do not provide a basis for disturbing the Magistrate Judge’s analysis on this point.

Accordingly, for these reasons,

NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiff’s objections to the Magistrate Judge’s January 5, 2012 Report and Recommendation are OVERRULED. IT IS FURTHER ORDERED that the Magistrate Judge’s Report and Recommendation is ADOPTED in its entirety, as supplemented by the rulings in this order. Finally, IT IS FURTHER ORDERED that, for the reasons set forth above and in the Magistrate Judge’s

Report and Recommendation, Defendant's April 20, 2011 motion for summary judgment (docket #11) is GRANTED, and Plaintiff's March 9, 2011 motion for summary judgment (docket #10) is DENIED.

s/Gerald E. Rosen
Chief Judge, United States District Court

Dated: February 16, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on February 16, 2012, by electronic and/or ordinary mail.

s/Ruth A. Gunther
Case Manager